IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.1136 OF 2002

Shri.Sharadchandra Arjun Sawant ..Petitioner

Vs.

Mr.S.P.Mistry and Ors. ..Respondents

....

Mr.M.B.Kotak for Petitioner
Mr.S.R.Singh for Respondent no.2.

....

CORAM : B.H.MARLAPALLE,J.

DATE : APRIL 4,2005

P.C.:

1. Heard the learned counsel for the Petitioner who had filed an application below Exh.1 in Motor Accident Claim Petition No. 2327 of 1999 for no fault liability payment under Section 140 of the Motor Vehicles Act, 1988. The said application has been rejected by the learned Member of the Motor Accident Claims Tribunal at Mumbai, by his order dated 18.9.2001 and hence, this petition.

2. The petition has been filed in this Court on or about 2.12.2002 and for the last more than three years, it has been pending admission. The Claims

Tribunal considered two disability Certificates submitted in support of the claim for no fault liability which is nothing short of an interim compensation pending the final Award and which interim compensation is also liable to be adjusted against the final amount of the Award if any. The first Certificate was that of Dr.Shyam Bhandary and the second Certificate was that of Dr.S.V.Tandel. The second Certificate claimed that the Claimant had suffered 'neurological deformity' and thus sustained 30% partial disability. But this is not supported by the Certificate issued by Dr.Bhandary and therefore there are two Certificates conflicting in nature and the Certificate issued by Dr.Tandel did not make out a case for permanent disability as defined under Section 142 of the Act, and the trial Court has rejected the application. The injuries suffered by the Claimant and as mentioned under column 11 of the application, were two injuries viz. (1) Head Injury and (2) Aomoronagic contusion with other multiple serious injuries. The certificates relied upon did not make out a case of permanent disability under Section 142 and therefore, the application has been rightly rejected. No case is made out to interfere with this view as the said cannot be termed as perverse or patently erroneous. The petition is therefore, rejected summarily.

3. While rejecting the petition summarily, it is directed that the Claim Petition No.2327 of 1999 be heard and decided on its own merits as expeditiously as possible and in any case within a period of six months from the receipt of writ from this Court.

[B.H.MARLAPALLE,J.]